

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSE A. MARTINEZ LEON	
Plaintiff,	
v.	CIVIL ACTION NO.: 2:22-CV-4365
USA TRUCK, INC. & SILVESTER FARRAR.	
Defendants.	

DEFENDANTS' NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants, USA Truck, Inc. and Silvester Farrar (“Removing Defendants”), by and through counsel, give Notice of Removal of this action from the Common Pleas Court of Philadelphia County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania, and in support thereof, state as follows:

REMOVAL IS TIMELY UNDER 28 U.S.C. § 1446

1. Plaintiff, Jose A. Martinez Leon (“Plaintiff”), with the Complaint having been filed in the Philadelphia County Court of Common Pleas on September 30, 2020, and docketed in the matter entitled *Martinez Leon v. USA Truck, Inc., et al.*, No. 220903010. A true and correct copy of Plaintiff’s Complaint is annexed hereto as **Exhibit “A.”**

2. This Notice of Removal is being filed within 30 days after receipt by Removing Defendants of a copy of a paper from which it may be ascertained that this case is one which has become removable in accordance with 28 U.S.C. § 1446(b)(3). *See Erekson v. Ashford Philadelphia Annex, LLC*, No. 12-5815, 2013 U.S. Dist. LEXIS 57745 (E.D. Pa. Apr. 23, 2013).

3. Pursuant to 28 U.S.C. § 1446(d), upon filing this Notice of Removal, Removing Defendants will file a Notice of Removal in the State Court Action pending in the Common

Pleas Court of Philadelphia County, Pennsylvania and will provide written notice to Plaintiff. A true and correct copy of the Removing Defendants' Notice of Filing of Removal is annexed hereto as **Exhibit "B."**

DIVERSITY OF CITIZENSHIP EXISTS UNDER 28 U.S.C. § 1332

4. Plaintiff is a citizen of Texas with an address of 7514 Kovar Road, Beasley, TX 77417. *See Exhibit "A"* at ¶ 1.

5. Defendant, USA Truck, Inc. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business at 3200 Industrial Park Road, Van Buren, AR 72956. *See Id.*

6. Defendant, Silvester Farrar is a citizen of the Commonwealth of Virginia and resides at 66 Tyson Road, Bracey, VA 23919. *See Id.*

AMOUNT IN CONTROVERSY EXCEEDS \$75,000

7. Plaintiff's Complaint seek damages "**in excess of Seventy-Five Thousand Dollars (\$75,000.00)**." *See ad damnum* clauses throughout the Complaint (emphasis added).

8. Plaintiff alleges that he has suffered various severe and permanent injuries. *See Exhibit "A"* at ¶¶ 12, 16, 24, and 29.

9. It is patent on the face of the Complaint that the total alleged damages sought exceed \$75,000. *See ad damnum* clauses throughout the Complaint.

10. As such, the amount in controversy exceeds the jurisdictional threshold of \$75,000, exclusive of interest and costs, required by 28 U.S.C. § 1332(a).

**DIVERSITY JURISDICTION IS SATISFIED
AND VENUE IS PROPER**

11. Based upon the above, this Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that Plaintiff's Complaint presents a case where the

amount in controversy is alleged to total in excess of \$75,000 and the controversy exists between citizens of different states.

12. Venue is proper in that the events or omissions giving rise to the claim occurred in Berks County, Pennsylvania, which is situated in this Judicial District. *See* 28 U.S.C. § 1391(b)(2).

13. Removing Defendants will promptly file a copy of this Notice with the Clerk of the Court of Common Pleas in Philadelphia County, Pennsylvania in the State Court Action as required by 28 U.S.C. § 1446(d) and provide written notice to Plaintiffs.

14. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

Respectfully submitted,

SALMON, RICCHEZZA, SINGER & TURCHI LLP

A handwritten signature in blue ink, appearing to be 'Z. Ballard', written over a horizontal line.

By: _____

Zachary J. Ballard, Esquire
David J. Jones, Esquire
1601 Market Street – Suite 2500
Philadelphia, PA 19103
zballard@srstlaw.com
djones@srstlaw.com
*Attorneys for Defendants, USA Truck, Inc.
and Silvester Farrar*

Dated: November 1, 2022

CERTIFICATE OF SERVICE

I, David J. Jones, Esquire, hereby certify that I served a true copy of the foregoing Notice of Removal on the following counsel by email:

Michael J. Soska, Esquire
LundyLaw, LLP
1600 Pennsylvania Avenue, Ste.C,
Wilmington, DE 19806
msoska@LundyLaw.com
Counsel for Plaintiff

SALMON, RICCHEZZA, SINGER & TURCHI LLP

A handwritten signature in blue ink, appearing to read 'Z. Ballard', is positioned above the 'By:' line.

By: _____

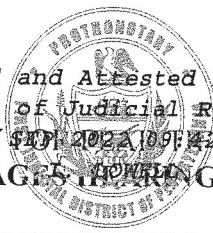
Zachary J. Ballard, Esquire
David J. Jones, Esquire
1601 Market Street – Suite 2500
Philadelphia, PA 19103
zballard@srstlaw.com
djones@srstlaw.com
*Attorneys for Defendants, USA Truck, Inc.
and Silvester Farrar*

Dated: November 1, 2022

Exhibit “A”

LUNDY LAW, LLP
BY: MICHAEL J. SOSKA, ESQUIRE
IDENTIFICATION NO. 204866
1818 MARKET STREET, SUITE 2400
PHILADELPHIA, PA 19103-2297
215-246-9299
msoska@lundylaw.com

Filed and Attested by the
Office of Judicial Records
ATTORNEY FOR 2022-109144 am
ASSESSMENT OF DAMAGES HEARING:



☒ IS ☐ IS NOT REQUIRED
☒ Jury ☐ Non-Jury ☐ Arbitration

Jose A. Martinez Leon
7514 Kovar Road
Beasley, TX 77417

Plaintiff

v.

USA Truck, Inc.
3200 Industrial Park Road
Van Buren, AR 72956

And

Silvester Farrar
66 Tyson Road
Bracey, VA 23919

Defendants

COURT OF COMMON PLEAS

PHILADELPHIA COUNTY

Trial Division

TERM, 2022

No.

NOTICE TO DEFEND

NOTICE

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE

1 Reading Center
Philadelphia, PA 19107
215-238-1701

AVISO

"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días, de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

LAWYER REFERRAL SERVICE

1 Reading Center
Philadelphia, PA 19107
215-238-1701

LUNDY LAW, LLP
BY: MICHAEL J. SOSKA, ESQUIRE
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msoska@lundylaw.com

ATTORNEY FOR PLAINTIFF
ASSESSMENT OF DAMAGES HEARING:

☒ IS ☐ IS NOT REQUIRED

☒ Jury ☐ Non-Jury ☐ Arbitration

Jose A. Martinez Leon
7514 Kovar Road
Beasley, TX 77417

Plaintiff

v.

USA Truck, Inc.
3200 Industrial Park Road
Van Buren, AR 72956

And

Silvester Farrar
66 Tyson Road
Bracey, VA 23919

Defendants

COURT OF COMMON PLEAS

PHILADELPHIA COUNTY

Trial Division

TERM, 2022

COMPLAINT

1. Plaintiff, Jose A. Martinez Leon ("Plaintiff"), is an adult individual who resides at the address noted in the above caption.
2. Defendant, USA Truck, Inc., is a business entity with a registered office located at the address noted in the above caption.
3. Defendant, Silvester Farrar ("Farrar"), is an adult individual who resides at the address noted in the above caption.
4. At all times relevant hereto, Defendant, USA Truck, Inc., was a motor carrier that regularly and systemically conducted business in Philadelphia County.

5. At all times relevant hereto, Defendant, Farrar, was the operator of a 2021 Kenworth T680 tractor-trailer (“truck”).

6. At all times relevant hereto, Defendant, USA Truck, Inc., was the owner of the truck operated by Defendant, Farrar.

7. At all times relevant hereto, Defendant, Farrar, was an employee of Defendant, USA Truck, Inc., and was acting in the course and scope of his employment.

8. At all times relevant hereto, Defendant, Farrar, had permission to use the truck.

9. On or about, January 04, 2021, at approximately 2:34 p.m., the Defendant, Farrar’s truck struck a vehicle occupied by the Plaintiff at or near the rear parking lot of the Love’s Truck stop in Upper Bern Township, PA.

10. The crash occurred when the Defendant, Farrar, carelessly, negligently, and without warning struck the Plaintiff’s vehicle, causing injuries and damages as set forth herein.

11. As the direct and proximate cause of the Defendants’ negligence, the Plaintiff sustained severe and permanent injuries to his body, which include, but are not limited to, his left knee, back, neck and heart.

12. The Plaintiff suffered internal injuries of an unknown nature, he suffered severe aches, pains, mental anxiety and anguish and a severe shock to his entire nervous system and other injuries the full extent of which is not yet known.

13. The Plaintiff sustained an aggravation and/or exacerbation of injuries both known and unknown. He has in the past and will in the future undergo severe pain and is unable to attend to his usual duties and occupation, all to his great financial detriment and loss.

14. As a direct and proximate result of the aforesaid negligence of Defendants, the Plaintiff has been compelled to expend money for medicine and medical attention and may be

required to expend additional sums for the same purpose in the future.

15. As a direct and proximate result of the aforesaid negligence of the Defendants, the Plaintiff has been prevented from attending to his usual daily activities and duties, and may be so prevented for an indefinite period of time in the future, all to his great detriment and loss.

16. As a direct and proximate result of the aforesaid negligence of the Defendants, the Plaintiff has suffered physical pain and mental anguish and humiliation and may continue to suffer same for an indefinite period of time in the future.

17. As a direct and proximate result of the aforesaid negligence of the Defendants, the Plaintiff has incurred in the past and will continue to incur in the future, additional financial expenses or losses which he is entitled to recover.

COUNT I (NEGLIGENCE)

Plaintiff, Jose A. Martinez Leon v. Defendant, Silvester Farrar

18. Plaintiff incorporates herein by reference the allegations contained in the above paragraphs as though the same was herein set forth at length.

19. The aforesaid act was caused as a direct and proximate result of the carelessness and negligence of Defendant, Silvester Farrar, which consisted, *inter alia*, of the following:

- a. failing to set and/or apply the brakes;
- b. failing to keep proper lookout;
- c. failing to have said motor vehicle in proper and adequate control at all times;
- d. operating said motor vehicle in a careless manner, without regard for the rights and safety of those lawfully upon the road;
- e. failing to exercise due and proper care;
- f. failing to give proper and sufficient warning of the approach of said motor

vehicle;

- g. failing to stop said motor vehicle before striking the Plaintiff;
- h. striking the Plaintiff's vehicle;
- i. operating the vehicle while tired and fatigued;
- j. violations of the Federal Motor Carrier Safety Regulations as it relates to the above acts of negligence; and,
- k. violations of the Pennsylvania Motor Vehicle Code, as it relates to the above acts of negligence.

20. As a direct and proximate result of the aforesaid negligence of the Defendant, the Plaintiff has suffered damages as set forth previously.

WHEREFORE, Plaintiff, Jose A. Martinez Leon, demands judgment in his favor and against both Defendants, singularly, jointly, and/or severally in a sum in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus costs, pre and post judgment interest and all other relief allowed by law.

COUNT II—VICARIOUS LIABILITY

Plaintiff, Jose A. Martinez Leon v. Defendant, USA Truck, Inc.

21. Plaintiff incorporates by reference the allegations contained in the above paragraphs as though the same were herein set forth fully at length.

22. Defendant, USA Truck, Inc., is vicariously liable for the actions of its agent, servant, workman and/or employee, Defendant, Silvester Farrar, who at all relevant times acted within the course and scope of his authority and on the Defendant's behalf.

23. Defendant is liable for the negligent conduct of its driver/employee, Defendant Silvester Farrar, under the doctrine of respondeat superior because her conduct as aforesaid was

done with the intent of furthering Defendant's business.

24. As a direct and proximate result of the aforesaid negligence of the Defendant, the Plaintiff has suffered severe and permanent injuries to his body, as set forth previously herein.

25. As a direct and proximate result of the aforesaid negligence of Defendant, the Plaintiff is entitled to recover economic and non-economic damages, as set forth previously herein.

WHEREFORE, Plaintiff, Jose A. Martinez Leon, demands judgment in his favor and against both Defendants, singularly, jointly, and/or severally in a sum in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus costs, pre and post judgment interest and all other relief allowed by law.

COUNT III-NEGLIGENT ENTRUSTMENT

Plaintiff, Jose A. Martinez Leon v. Defendant, USA Truck, Inc.

26. Plaintiff incorporates the foregoing paragraphs of this Complaint as if set forth fully at length herein.

27. The negligence and/or carelessness of Defendant, USA Truck, Inc., which was a proximate cause of the aforesaid motor vehicle collision and the resultant injuries and damages sustained by the Plaintiff, consists of, but is not limited to, the following:

- a. Permitting Defendant, Farrar, to operate the motor vehicle without first ascertaining whether or not he was capable of properly operating said vehicle;
- b. Permitting Defendant, Farrar, to operate the motor vehicle when Defendant knew, or in the exercise of due care and diligence, should have known that Defendant, Farrar, was capable of committing the acts of negligence set forth above;

- c. Failing to properly screen, hire, employ, train and/or supervise Defendant, Farrar;
- d. Negligently entrusting Defendant, Farrar, to drive the truck;
- e. Failing to warn those persons, including the Plaintiff, that Defendant knew, or in the existence of due care and diligence should have known, that the Plaintiff would be exposed to Defendant, Farrar's negligent operation of the motor vehicle.

28. At all times relevant hereto, Defendant knew or should have known that Defendant, Farrar, was a careless driver and/or should not have been behind the wheel of a vehicle, but failed to take reasonable steps to protect other motorists from serious bodily injury.

29. As a direct and proximate result of the aforesaid negligence of the Defendant, the Plaintiff has suffered severe and permanent injuries to his body, as set forth previously herein.

30. As a direct and proximate result of the aforesaid negligence of the Defendant, the Plaintiff is entitled to recover economic and non-economic damages, as set forth previously herein.

WHEREFORE, Plaintiff, Jose A. Martinez Leon, demands judgment in his favor and against both Defendants, singularly, jointly, and/or severally in a sum in excess of Seventy-Five Thousand Dollars (\$75,000.00) plus costs, pre and post judgment interest and all other relief allowed by law.

LUNDY LAW, LLP

A handwritten signature in black ink, appearing to read 'Michael J. Soska', written over a horizontal line.

BY: _____
Michael J. Soska, Esquire
Attorney for Plaintiff

Date: September 30, 2022

VERIFICATION

I, Michael Soska, Esquire, hereby state that I am the attorney in this action and verify that the statements made in the foregoing pleading are true and correct to the best of my knowledge, information and belief. I understand that the statements therein are made subject to the penalties of 18 PA. C.S.A. §4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Michael Soska', with a stylized flourish at the end.

Michael Soska, Attorney for Plaintiff

Date: September 30, 2022

Exhibit “B”

SALMON, RICCHEZZA, SINGER & TURCHI LLP

By: Zachary J. Ballard, Esq. (Attorney ID #206177)
David J. Jones, Esq. (Attorney ID #322087)
1601 Market Street – Suite 2500
Philadelphia, PA 19103
T:(215) 606-6600 / F: (215) 606-6601

*Attorneys for Defendants, USA Truck, Inc.
and Silvester Farrar*

JOSE A. MARTINEZ LEON

Plaintiff,

v.

USA TRUCK, INC. & SILVESTER
FARRAR.

Defendants.

:
: COURT OF COMMON PLEAS
: PHILADELPHIA COUNTY
:
: CIVIL TRIAL DIVISION
:
:
: No. 220903010
:
:
:

NOTICE OF REMOVAL

TO THE OFFICE OF JUDICIAL RECORDS:

PLEASE TAKE NOTICE that Defendants, USA Truck, Inc. and Silvester Farrar (“Defendant”), have filed a Notice of Removal in the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania, regarding the above captioned matter.

In accordance with 28 U.S.C. § 1446, Defendants file herewith and attach a true and correct copy of the Notice of Removal. A true, correct and time-stamped copy of Defendants’ October 31, 2022 Notice of Removal to the United States District Court for the Eastern District of Pennsylvania is annexed hereto as **Exhibit “1.”**

Respectfully submitted,

SALMON, RICCHEZZA, SINGER & TURCHI LLP



By: _____
Zachary J. Ballard, Esquire
David J. Jones, Esquire
*Attorneys for Defendants, USA Truck, Inc.
and Silvester Farrar*

Dated: October 31, 2022

CERTIFICATE OF SERVICE

I, David J. Jones, hereby certify that I served a true copy of the foregoing Notice of Removal on the following counsel by email:

Michael J. Soska, Esquire
LundyLaw, LLP
1600 Pennsylvania Avenue, Ste.C
Wilmington, DE 19806
msoska@LundyLaw.com
Counsel for Plaintiff

SALMON, RICCHEZZA, SINGER & TURCHI LLP

A handwritten signature in blue ink, appearing to read 'Z. Ballard', is positioned above the signature line.

By: _____

Zachary J. Ballard, Esquire
David J. Jones, Esquire
1601 Market Street – Suite 2500
Philadelphia, PA 19103
zballard@srstlaw.com
djones@srstlaw.com
*Attorneys for Defendants, USA Truck, Inc.
and Silvester Farrar*

Dated: October 31, 2022